

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES A. BIGGINS,	:	
	:	C.A. No. K12C-05-016 WLW
Petitioner,	:	
	:	
v.	:	
	:	
CARL C. DANBERG, et al.,	:	
	:	
Respondents.	:	

**ORDER DENYING *IN FORMA PAUPERIS***

1. Plaintiff James Arthur Biggins has filed a complaint against Carl Danberg, et al.

2. The plaintiff filed a motion to proceed *in forma pauperis*. The Petitioner has failed to properly answer or supply pertinent information under ¶ 10(b) and (e) in his Affidavit in support of the application to proceed *in forma pauperis*. The answer “no available records” is not sufficient.

3. The Court takes judicial notice of pending and numerous past filings of prior cases which this Court must consider pursuant to 10 *Del. C.* § 8804(f), and as this Court explained in *Biggins v. Phelps*, Del. Super., C.A. No. S08M-12-018 THG (Jan. 7, 2009), *rearg. den.* (Jan. 22, 2009), *aff’d.*, 2009 WL 2055128 (Del. July 16, 2009) (TABLE), in at least seven previous cases which Petitioner filed while incarcerated, Petitioner’s pleading have been deemed frivolous and in at least two other cases, his complaints were dismissed for failing to state a claim upon which relief may be granted.

4. 10 *Del. C.* § 8804(f) provides in pertinent part as follows:

In no event shall a prisoner file a complaint or appeal of a judgment arising from a complaint brought in forma pauperis if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed. Complaints or appeals therefrom dismissed prior to the enactment of this section shall be counted for purposes of determining the number of previously dismissed proceedings. No petition for a writ of habeas corpus or any appeal from the denial of any such petition shall be dismissed under this subsection.

5. Based on the foregoing, the Petitioner may be statutorily precluded from proceeding *in forma pauperis* unless he is in imminent danger of serious physical injury at the time the complaint is filed. The Petitioner's complaint does not appear to make a case that he was in "imminent danger of serious physical injury" at the time in question. Unless the Petitioner completes the Affidavit properly, this Court cannot make a determination, especially in light of the almost indecipherable handwriting of the Petitioner.

6. Therefore, unless the Petitioner supplies a completed Affidavit with all questions properly answered, and can factually meet the requirements of 10 *Del. C.* § 8804(f), the Petitioner is denied *in forma pauperis* status for this case. Thus, he must pay a filing fee in the amount of \$185.00 and Sheriff's costs in the amount of \$30.00 per person to be served, in order for this action to proceed.

***James A. Biggins v. Carl Danberg, et al.***

C.A. No. K12C-05-016 WLW

May 14, 2012

NOW, THEREFORE, this 14<sup>th</sup> day of May, 2012, it is hereby ordered as follows:

1. Petitioner's motion to proceed *in formal pauperis* is denied.
2. Petitioner must submit a filing fee in the amount of \$185.00 and \$30.00 for each person to be served for the Sheriff's fee. He must do so on or before May 31, 2012 or the action will be dismissed.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Department of Justice

Mr. James A. Biggins, JTVCC